IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

-

WRIT PETITION NO : 8962 of 2004

Between:

Sri. Veera Hunman mahila Podupu Sangam, (Regd. No.101/2003),
rep. by its President Ch. Narayanamma, W./o. Mastainaiah,
Stambalagaruvu, Guntur.

..... PETITIONER

AND

1 Commissioner, Municipal Corporation of Guntur, Guntur.
2 Health Officer, Municipal Corporation of Guntur, Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction declaring the short Tender Notice issued by the 1st respondent in Roc. No.7107/01/F2 Dt. 01.05.2004, which was published in Eenadu Guntur Edition on 04.05.2004 in so far as it relates to calling for tenders in respect of the Divisions already allotted to the petitioner by the 1st respondent in the Supply Order issued by him in Roc. NO.7107/01/F2 Dt. 26.09.2003 as illegal, arbitrary and unconstitutional and contrary to Memo No.21778/UBS/2002, M.A. Dt. 25.12.2003 issued by the Government of A.P. and consequently direct the 1st respondent to continue the work allotted to the petitioner as per the said supply order till the liquidation of the loan sanctioned to the petitioner as contemplated in the said Memo and further direct the respondent to engage the Tractor purchased by the petitioner along with workmen for doing sanitation works in the Municipal Corporation of Guntur.

Counsel for the Petitioner: MR.P.GOVIND REDDY

Counsel for the Respondents : MR.T.S.VENKATARAMANA

The Court made the following :

O R D E R :

1. This writ petition has been filed by Sri Veera Hanuman Mahila Podupu Sangam, represented by its President, Ch.Narayanamma with a prayer to issue a Writ of Mandamus declaring the Short Tender Notice issued by the 1st respondent-commissioner, Municipal Corporation of Guntur in Roc.No.7107/01/F2, dated 1.5.2004 as illegal, arbitrary and unconstitutional and contrary to memo.No.21778/UBS/2002, M.A., dated 25.12.2003 issued by Government of Andhra Pradesh and consequently direct the 1st respondent to continue the work allotted to the petitioner as per the supply order issued in proceedings in Roc.No.7107/01/F2, dated 26.9.2003.

2. The case of the petitioner as set out in the affidavit filed in support of the writ petition is :

The petitioner is a Sangam registered under the provisions of A.P. Societies Registration Act (35 of 2001) bearing Regn.No.101 of 2003 dated 15.2.2003. The petitioner-Sangam is also registered as a DWCUA group in 1st respondent-Corporation. The 1st respondent-Corporation issued a supply order in ROC.No.7107/01/F2, dated 26.9.2003 for supply of workmen for doing sanitation work from 1.10.2003 to 30-9-2004. The petitioner-Sangam purchased a new tractor by spending Rs.3,27,320/-. The 1st respondent-Corporation provided a subsidy of Rs.1,25,000/- and also arranged a loan of Rs.1,25,000/- from Andhra Bank, JKC College Branch, Guntur. Ch.Narayanamma, President of the petitioner-Sangam

mortgaged her residential house to Andhra Bank, JKC College Branch, Guntur for the loan amount given to the petitioner-Sangam. The 1st respondent-Corporation is under an obligation to engage the tractor along with workmen for doing sanitation works. The 1st respondent-Corporation issued a Short Tender Notice in Roc.No.7107/01/F2, dated 1.5.2004 calling for tenders for doing sanitation works in various divisions of Municipal Corporation of Guntur. 1st respondent-Corporation having issued supply order to the petitioner-Sangam on 26.9.2003 for carrying out sanitation works from 1.10.2003 to 30.9.2004 in division Nos.1, 24 and 5 ought not to have called for tenders in respect of the said divisions in the Short Tender Notice. The action of the 1st respondent-Corporation in calling for tenders in so far as it relates to the divisions already allotted to the petitioner-Sangam on 26.9.2003 is contrary to Memo.No.21778/UBS/2002, MA, dated 25.12.2002 issued by Government of Andhra Pradesh. As per clause 2.1 of the said memo wherever DWCUA groups have obtained loans, the sanitation works have to be continued for a period of 3 years or till the liquidation of the loans sanctioned to them, whichever is latter. Since the 1st respondent-Corporation has given subsidy and arranged loan from Bank for purchase of tractor for doing sanitation work, the 1st respondent-Corporation is under obligation to continue the petitioner- Sangam for a period of three years or to the liquidation of sanctioned loan whichever is latter. Hence, the writ petition questioning the tender issued by 1st respondent-Corporation on 1.5.2004.

3. The 1st respondent-Corporation filed counter affidavit. One D.Rama Rao has sworn to the counter affidavit. It is stated in the counter affidavit that 1st respondent-corporation has entrusted the sanitation work to 26 DWCUA groups, societies and podupu sangams without inviting tenders at the estimated rates to encourage the members of the societies/groups who are struggling to earn livelihood. The 1st respondent-Corporation in the supply order dated 26.9.2003 has allotted the areas to the Sangams/groups and for one year from 1.10.2003 to 30.9.2004. The petitioner-Sangam is one among the 26 groups. The 1st respondent-Corporation has published a Short Tender Notice dated 1.5.2004 for supply of men for sanitation works, tractor with labour, and rickshaw pullers to run the try cycles. The petitioner-Sangam has also participated in tender notice though it has filed the writ petition.

The tenders received on 26.5.2004 have been cancelled by 1st respondent-Corporation so as to enable for continuance of the groups till the contract period i.e. 30.9.2004. The 1st respondent-Corporation has a requirement of 32 tractors for lifting garbage from various places of town to compost yard. The requirement of tractors met with 18 tractors from DWCUA groups, 12 tractors from Registered societies of Public Health Works, one tractor owned by the 1st respondent and another one from ex-naxalite. As there was no necessity for more tractors, the 1st respondent could not engage the tractor of the petitioner-Sangam. Thereafter the municipal tractor has went out of order and therefore the 1st respondent-Corporation has engaged the tractor of the petitioner-Sangam from 22.6.2004. Since then the petitioner-Sangam is being paid hire charges and wages of men supplied with the tractor. The petitioner-Sangam has purchased the tractor on 22.3.2004 and whereas three more DWCUA groups have purchased tractors under SJSRY scheme after the date of purchase of the petitioner-Sangam. Though three DWCUA groups purchased tractors under SJSRY scheme, the 1st respondent-Corporation could not engage the tractors since there was no requirement. After the expiry of the period of supply order i.e. 30-9-2004, the 1st respondent-Corporation have a right to call for tenders. However, the 1st respondent-Corporation continued the services of 26 societies and Podupusangams as well as petitioners- Sangam. The tenders for supply of sanitation works for workers for sweeping of roads and cleaning of drains have been called on 30.12.2004 from the registered societies as contemplated in G.O.Ms.No.581 M.A., Dt.6.11.1996 and tenders have been decided and supply orders have been issued on 31.1.2005 to the successful tenderers w.e.f. 1.2.2005. The petitioner-sangam's tractor has been engaed from 22.6.2004 as the necessity of the tractor is found since the tractor of 1st respondent-corporation went out of order and as the tractor of the petitioner-sangam is placed first in the serial after the engagement of nine tractors which have been engaged prior to the purchase of the tractor by the petitioner-sangam i.e. on 22.3.2004. Since the date of engagement of the tractor of the petitioner-sangam along with eight workers, the hire charges of the tractor and wages of the workers have been paid to the petitioner-sangam periodically along with other DWCUA groups.

4. Heard learned counsel appearing for the petitioner-Sangam and the learned

Standing Counsel appearing for respondents.

5. Learned counsel appearing for the petitioner-Sangam submits that the 1st respondent-Corporation having engaged the tractor of the petitioner along with workmen for sanitation works is under the obligation to continue them for a period of three years or till liquidation of the loan sanctioned, which ever is later. He further submits that the action of the 1st respondent-Corporation in issuing short tender notice dated 1.5.2004 is illegal, arbitrary and unconstitutional and contrary to memo No.21778/UBS/2002, M.A., dated 25.12.2003.

6. Learned Standing Counsel appearing for the respondents submits that any invitation to tender is beyond the scope of judicial scrutiny and therefore the writ petition is liable to be dismissed. In support of his submissions he placed reliance on the decision of Supreme Court in GLOBAL ENERGY LTD. AND ANOTHER V. M/S ADANI EXPORTS LTD. & OTHERS. In the cited decision it has been held that the terms of invitation to tender are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice.

7. The admitted facts are that the petitioner-Sangam purchased a tractor on 22.3.2004. The 1st respondent-Corporation has provided subsidy of Rs.1,25,000/- and arranged for a loan of Rs.1,25,000/- from Andhra Bank, JKC Branch, Guntur. The 1st respondent-Corporation allotted sanitation works to the petitioner-Sangam in respect of divisions, 1, 24 and 5 under the supply order vide proceedings dated 26.9.2003 for the period from 1.10.2003 to 30-9-2004. The 1st respondent-corporation issued short tender notice vide proceedings dated 1.5.2004 calling for tenders for sanitation works. Questioning the short tender notice, the petitioner-sangam has filed this writ petition. After filing the writ petition a circular came to be issued by the Municipal Administration on 4.6.2004 extending the period of sanitation works by six more months uniformly.

8. In the counter affidavit filed on behalf of the 1st respondent it is stated that the tenders issued on 26.5.2004 in pursuance of the short tender notice Roc.No.7107/01/F2, dated 1.5.2004 have been cancelled so as to enable for continuance of the groups till the expiry of contract period. It is further stated in the counter affidavit that the petitioners' tractor will be continued till the liquidation of loan subject to the approval of standing committee. Paras 3 to 5 of the counter are relevant to be noted and they are :

> " 3. In reply to paragraph No.3 it is submitted that it is not correct to say that the tractor of the petitioner engaged only after filing the writ petition. The petitioner tractor has been engaged from 22.5.2004 as the necessity of the tractor is found since the own tractor of the respondent is went to repairs and as the tractor of the petitioner is stand first in the serial after the engagement of nine tractors which have been engaged prior to the purchase of the tractor by the petitioner i.e, 22.3.2004. In view of the urgency and the petitioner approached the respondent, his tractor was engaged on verbal orders. Since the date of engagement of tractor and 8 number of workers i.e., 22.6.2004 the hire charges for the tractor and the wages of the workers are being paid to the petitioner periodically along with other DWCUA groups.
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> 4. In reply to paragraph No.4 it is submitted that it is not correct to say that the nine DWCUA groups, which were sanctioned with loans, are continued with the sanitation work. The tractor of nine DWCUA groups with 8 No. of tractor workers are per each tractor will have to be continued till the liquidation of the loan as laid down in Government Memo No.21778/UBS/2002 M.A, DATED 25.12.2002. The petitioner's tractor will also be continued till the liquidation of loan subject to the condition of the approval of Standing Committee.
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> 5. In reply to paragraph No.5 it is submitted that the case of engagement of the tractors with men is quite different with the entrustment of the sanitation work to the DWCUA groups. As per the instructions issued in Government Memo No.21778/UBS/2002, dated 25.12.2002 only the contract period with the DWCUA groups under S.J.S.R.Y. scheme subject to the condition that the contract period should be for a period of three years or until liquidation of loan sanctioned which ever is later. Even after the liquidation the DWCUA groups shall be given a priority in allotment of 50% of the privatized sanitation/total sanitation. The DWCUA groups can be allotted in ULBS up to 50% of the privatized sanitation/total sanitation. As such the tractors only have to be continued until the liquidation of loan. Therefore, all the DWCUA groups registered in the city can not be

provided with the sanitation work including the petitioner as requested in the affidavit."

9. The writ petition is filed questioning the short tender notice issued by 1st respondent-Corporation in proceedings dated 1.5.2004. It is explicit from the counter affidavit that the tenders issued in pursuance of the tender notice have been cancelled. Such is the situation the writ petition does not survive. The apprehension of the writ petitioner that there is every possibility of 1st respondent-Corporation dispensing with the entrustment of the sanitation work to the petitioner-Sangam is not well founded in view of the specific assertion made by 1st respondent-Corporation that the tractor of the petitioner-Sangam along with eight workers will be engaged for sanitation work for three years or at the liquidation of the loan whichever is later.

10. For the above reasons, I find that the writ petition is devoid of merits and the same is hereby dismissed.

Dated: 15-07-2005. (B.Seshasayana Reddy, J)

Tnb

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation, Guntur.
2. The Health Officer, Municipal Corporation of Guntur, Guntur.
3. 2 CD copies